

2. However, despite ACEMLA's claim of 10%, ABS has requested that 95% of the total fund be distributed to itself because the Tribunal made 95% partial distributions in the 1982 and 1983 Juke-Box Royalty Distribution proceedings which were, according to ABS, based in part on ACEMLA's justification of claims in those proceedings. ABS argued that pursuant to the record of the recently-concluded consolidated 1982 and 1983 Juke-Box Royalty Distribution proceedings, Docket Nos. 83-2 and 84-2-83JD, maintenance of even 5% of the fund for the amount in controversy between ABS and ACEMLA is an overestimation. Finally, ABS contends that for reasons of its own internal distribution procedures and budgetary considerations, they would like to receive the portion of the 1984 fund not in controversy, i.e. 95% by their accounting, as soon as possible and certainly no later than December 31, 1985.

3. ACEMLA strongly opposes this Motion with respect to the amount which ABS seeks to have distributed.

4. First, contrary to ABS' contention, the Tribunal has regarded the maximum amount claimed by claimants as determinant of the amount in controversy for partial distribution purposes. In 1982, ACEMLA claimed 5% of the fund and Michael A. Walsh and Sammie Belcher each claimed less than 1% each, yet the Tribunal declared a controversy with respect to 10% of the fund, and only distributed 90% to ABS. ACEMLA v. Copyright Royalty Tribunal,

226 U.S.P.Q. 509 (2nd Cir. 1985); 48 Fed. Reg. 55497, December 13, 1983. Therefore, ABS is in error as to the Tribunal's past practice.

5. Second, while the Tribunal has said that "the maximum claims advanced by claimants (do) not determine the amount in controversy for partial distribution purposes", 48 Fed. Reg. 54679-80, December 6, 1983, the Tribunal has also recognized the "obligation of the Tribunal to protect the rights of all claimants" with respect to partial distributions of the fund. 49 Fed. Reg. 464589, November 2, 1984. In 1982, the Tribunal's satisfaction of this obligation resulted (correctly in ACEMLA's opinion) in the Tribunal retaining more of the fund than was in controversy.

6. Furthermore, 17 U.S.C. Section 116(c)(3) provides that after October 1, the Tribunal shall determine whether there exists a controversy concerning the distribution of the royalty fees. If it determines that a controversy exists, the Tribunal shall conduct a proceeding to determine the distribution. Subsection (c)(4)(C) specifically provides that

[d]uring the pendency of any proceeding under this section, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy (emphasis added).

The Tribunal has not yet officially declared a controversy with respect to the distribution of the 1984 Fund, nor has it declared

what percentage of the fund is in controversy. Therefore, ABS is more than a little premature in requesting that 95% of the fund be distributed when the Tribunal may well determine that 10% of the 1984 fund is in controversy.

7. Fourth, ACEMLA has claimed 10% of the 1984 fund and has filed supporting documentation of its claim. Yet ABS, prior to the Tribunal's declaration of a controversy, prior to the statutorily required proceeding to determine the distribution, and prior to any final determination of that proceeding by the Tribunal, has already determined that ACEMLA could only receive, at most, 5% of the 1984 Fund. While ACEMLA is painfully aware of ABS' pride and prejudices, ABS here appears to have exceeded its usual effrontary by requesting the Tribunal to delegate its own primary function, i.e., the determination of royalty distribution, to ABS.^{1/}

8. Fifth, ACEMLA has claimed 10% of the 1984 fund because it contends that 10% of all jukebox plays in the United States in 1984 were of titles that were in ACEMLA's catalogue and under its control. The fact that ACEMLA claimed 5% in 1982 and 5% in 1983 is no more relevant to its 1984 claim than is the fact that ACEMLA claimed 9.5% of the 1981 fund. Furthermore,

^{1/} If ABS is allowed to determine, prior to any distribution proceeding and the submission of any evidence, what amount of the fund can appropriately be claimed by other claimants, despite the claimant's own claim, the necessity of the Tribunal's existence would surely be in question.

the record of the recently concluded consolidated 1982 and 1983 Jukebox Royalty Distribution proceedings established that even more titles in ACEMLA's catalogue are in jukeboxes than it originally believed and that the number increases yearly due to the growth of the Hispanic community and the growth of its catalogue. Moreover, halving ACEMLA's claim for the 1984 Fund based on the consolidated 1982 and 1983 proceeding prior to the issuance of the Tribunal's Decision on that proceeding is, characteristically, presumptuous.

9. Sixth, ABS' request is illogically based on the public interest argument "that compulsory license fees should be distributed to creators and copyright owners as expeditiously as possible." However, in light of the fact that, absent a survey, ABS can not identify the titles of works actually performed in jukeboxes (the source of the funds it is seeking), ABS cannot therefore identify the copyright owners of those works. Instead, ABS proposes to distribute 95% of the 1984 Jukebox Fund via its own annual survey of all media, except jukeboxes, which has little, if any, correlation to jukebox plays. Distribution of 90% of the Jukebox Fund in this manner is bad enough; distribution of 95% of the fund in the face of a conflicting claim for an overlapping portion of the fund is preposterous. ABS' additional request for "prompt" distribution, including the naming of the date ABS wants the funds, even if it would necessitate sale of U.S. Treasury securities in advance of their maturity

date, so that ABS can quickly distribute the funds to copyright holders whose works may never have been played on jukeboxes is incredible.

10. Seventh, ABS has claimed 100% of the 1984 Fund, and immediate distribution of 95% of the 1984 Fund. However, ABS has never justified a claim of even 1% of the 1984 Fund. 37 C.F.R. Section 305.4(a) requires that every entity which has filed a claim pursuant to Section 305.2 shall file, no later than November 1 of each year, a statement claiming the proportionate share of compulsory license fees to which the entity believes it is entitled. "The statement shall include a detailed justification for the requested entitlement. . . ." As usual, however, ABS has relied on a vague, general and all inclusive description of its entitlement. This nebulous statement hardly satisfies the regulation's requirement for a "detailed justification" and should not be allowed to support a request for a distribution of any part of the fund, let alone a percentage of the fund which is in excess of the amount which appears to be in controversy.

11. Finally, in responding to ABS' belief that ACEMLA's late-filed justification of claim should not be accepted, ACEMLA submits that its filing was only 5 days late and that while ACEMLA requested 15 days to supplement that Statement, its Supplement was filed within four business days, thereby evidencing ACEMLA's due diligence. Moreover, the late-filing was inadvertent and no claimants to the 1984 Fund were in any way harmed or prejudiced by the late-filing.

WHEREFORE, on the basis of the foregoing, ACEMLA strongly opposes a partial distribution of 95% of the 1984 Jukebox Royalty Fund to ABS and strongly opposes a partial distribution of the 1984 Fund in any amount exceeding 90% of the Fund.

Respectfully submitted,

ASOCIACION de COMPOSITORES y
EDITORES de MUSICA LATINOAMERICANA

By 
Bruce A. Eisen

By 
Allan G. Moskowitz

Its Attorneys

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November 14, 1985

CERTIFICATE OF SERVICE

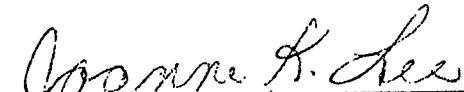
I, Joanne K. Lee, a secretary in the law firm of Shrinsky, Weitzman & Eisen, P.C., do hereby certify that on this 14th day of November, 1985, I sent a copy of ACEMLA's "Opposition to Motion for Immediate Partial Distribution", via United States first class mail, postage prepaid, to the following:

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Joanne K. Lee

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November 12, 1985

HAND DELIVERED

Mr. Edward W. Ray
Acting Chairman
Copyright Royalty Tribunal
1111 20th Street, N.W., Suite 450
Washington, D.C. 20036

Re: 1984 Juke-Box Royalty Distribution Proceeding
Docket No. _____

Dear Mr. Ray:

On behalf of Asociacion de Compositores y Editores de Musica Latinoamericana ("ACEMLA"), we are filing herewith an original and five copies of a Supplemental Statement pursuant to 37 C.F.R. Section 305.4 with respect to the above-captioned proceeding.

On November 5, 1985, ACEMLA filed a "Petition for Leave to File Late-Filed Claim of Entitlement Pursuant to 37 C.F.R. Section 305.4" and a "Statement Pursuant to 37 C.F.R. Section 305.4." In the text of ACEMLA's statement, ACEMLA respectfully requested leave to supplement the November 5th filing in order to submit documentation supportive of ACEMLA's claims. Attached hereto is the Supplemental Statement describing the documentation and the documentation itself.


Once again, ACEMLA respectfully requests acceptance of its supplemental documentation for the above-referenced 1984 Juke-Box Royalty Distribution proceedings.

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

SHRINSKY, WEITZMAN & EISEN, P.C.

By


Allan G. Moskowitz

Enclosures

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November 14, 1985

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Acting Chairman
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Re: 1984 Juke-Box Royalty Distribution Proceeding
Docket No. _____

Dear Mr. Ray:


On behalf of Asociacion de Compositores y Editores de Musica Latinoamericana ("ACEMLA"), we are filing herewith an original and five copies of its "Opposition" to "Motion for Immediate Partial Distribution" with respect to the above-captioned proceeding.

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

SHRINSKY, WEITZMAN & EISEN, P.C.

By


Allan G. Moskowitz

Enclosures